



June 14, 2017

***Via Email and First Class Mail***

Mr. Juan Fajardo, Esq.  
The Office of Regional Counsel  
New Jersey Superfund Branch  
290 Broadway, 17th Floor  
New York, NY 10007-1866

JUN 16 2017  
RECEIVED

**Re: Offer of Cash Out Settlement at the Diamond Alkali Superfund Site Lower 8.3  
Miles of Lower Passaic River; Essex and Hudson Counties, New Jersey**

Dear Mr. Fajardo:

Our office represents Palin Enterprises in connection with the alleged liabilities associated with the former American Modern Metals site located at 44 Passaic Avenue Kearny, New Jersey. We are in receipt of the proposed Cash Out Settlement at the Diamond Alkali Superfund Site.

As you may be aware, the American Modern Metals site is subject to environmental litigation and several pending insurance claims related to the investigation and remediation of the American Modern Metals site (and any potential off-site impacts to the Lower Passaic River). In connection with the pending litigation, there has been extensive expert opinions and testimony regarding groundwater flow and the transportation of TCE from the site. Specifically, the expert opinion of Robert D. Mutch, Jr., P.Hg, P.E. of Mutch Associates, LLC, supports the position that the Passaic Valley Sewage Commission sewer line located beneath Passaic Avenue created a preferential pathway diverting groundwater from the American Modern Metals site; thus, preventing any contribution of contaminants from the site to the Lower Passaic River.<sup>1</sup>

In addition, the proposed settlement is unsupported by a factual basis, established through any supporting nexus documentation that any activity of Palin Enterprises caused or contributed to the contamination of the American Modern Metals site or the Lower Passaic River. The ongoing remediation of the American Modern Metals site involves the treatment and removal of chlorinate solvents including TCE. It does not involve dioxin, the main driver of the sediment cleanup in the Lower Passaic River, or even mercury and

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<sup>1</sup> A copy of Mr. Mutch's expert report is attached hereto for your review and consideration.

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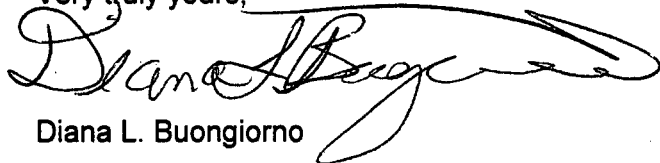
PCBs, which also have been identified by the USEPA as major contaminants of concern. In fact, Palin Enterprises was only put on notice of its potential liability associated with the Lower Passaic River after the owner of the property, GHC Holdings in Liquidation, requested that USEPA do so in furtherance of its own unsupported claims related to the American Modern Metals site. Accordingly, Palin Enterprises maintains that it is not responsible for any of the contamination of the Lower Passaic River nor is it responsible for any of the costs associated with the investigation and remediation thereof.

Lastly, as we previously discussed, due to the pendency of several insurance claims associated with the American Modern Metals site, Palin Enterprises is under an obligation to notify each insurance carrier of the potential settlement as to not jeopardize any claim for indemnity that may exist. In addition, each of the noticed insurance carriers must approve of the settlement. Therefore, the short time by which Palin Enterprises must accept the proposed settlement makes obtaining such approvals nearly impossible.

Accordingly, Palin Enterprises must reject USEPA's proposed Cash Out Settlement at this time.

Thank you for your courtesy and cooperation in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Diana L. Buongiorno", with a long, sweeping horizontal stroke extending to the right.

Diana L. Buongiorno

DLB:  
Attachment  
cc: Michael Palin, Palin Enterprises